Caltex Oil Malaysia Ltd v Classic Best Sdn Bhd & Ors

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO MT1—12–137 OF 2004
SURIYADI J
27 JUNE 2006

Contract — Sale of goods — Claim for payment for goods delivered — Whether oral evidence could be adduced to contradict documents — Statement of accounts and invoices delivered — No protest or question on statements of accounts and invoices — Whether defendants estopped from questioning statement of accounts — whether plaintiff breached terms of guarantee letter by allowing unauthorised personnel to receive goods

The first defendant had ordered goods from the plaintiff and the plaintiff had delivered the goods to the first defendant, the acceptance of which had been acknowledged by the first defendant, who had placed their company stamps on the delivery orders. The delivery orders were duly signed by the first defendant's representatives and addressed to the first defendant. Invoices issued by the plaintiff were addressed to the first defendant. The second, third and fourth defendants were guarantors by virtue of a letter of guarantee. This was the plaintiff's appeal against the decision of the sessions court judge dismissing its application for summary judgment under O 26A of the Subordinate Courts Rules 1980. The issues to be determined were, inter alia: (i) whether the plaintiff had breached the terms of the letter by allowing unauthorised personnel to receive goods; (ii) whether there were discrepancies in the plaintiff's deliveries as to stop payment of the two cheques issued to the plaintiff; and (iii) whether the letter was valid as the plaintiff had failed to send the statements of account duly signed by the managing director or its authorised representative.

Held, allowing the appeal:

(1) In cases involving goods sold and delivered, the emphasis is placed on the written documents, namely the statement of accounts, invoices, delivery orders, delivery notes and the debit notes. These documents would collectively constitute a contract reduced into writing: *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124 followed; *YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian* [1989] 3 MLJ 490 and *Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd* [1986] 1 CLJ 595 referred. By virtue of s 92 of the Evidence Act 1950, the defendants in this case could not offer oral evidence to contradict, vary, add to or subtract from, the terms of any contract (see paras 10, 12).

(2) The plaintiff had sent statement of accounts and invoices to the first defendant. The fact was undisputed. Letters of demand were sent by the plaintiff to the defendants and the defendants had neither protested nor questioned the

plaintiff on the statements of accounts, invoices, delivery notes, debit notes and the letter of demand. Furthermore, the first defendant had stopped payment of its two cheques issued to the plaintiff without giving any reasons. The defendant had not sent any letter to the plaintiff. It appeared to be an afterthought without purpose other than to confuse and delay (see paras 13, 19).

(3) It was an undisputed fact that the plaintiff had sent statements of accounts to the first defendant and the first defendant had not questioned the plaintiff on the accounts. This meant that a situation of 'account-stated' had arisen and the defendants were estopped from questioning the statement of accounts. The defendants had not alleged fraud and had even made payment based on accounts supplied by the plaintiff which it had since stopped payment. The defendants had not questioned the invoices sent by the plaintiff. If indeed they had not received the goods that they ordered, or that they were invoiced for someone else's orders, it was only natural that the objection should have been raised there and then and not after this action was filed (see paras 16–17); *Emperee Industries Sdn Bhd v Renecgo Sdn Bhd* [1987] 1 CLJ 477 and *Syarikat Tan Thiam Siong Sdn Bhd* [1983] 1 CLJ 256 referred.

(4) Clause 15 of the guarantee does not specify that the statement of accounts should be sent to the second, third and fourth defendants. It merely stated that a statement of account signed by the managing director of the plaintiff or its agent is sufficient and is conclusive proof against the defendants. Therefore, the defendants had failed to raise any triable issues (see para 20).

[Bahasa Malaysia summary

Defendan pertama telah membuat pesanan barangan daripada plaintif dan plaintif telah menghantar barangan itu kepada defendan pertama, penerimaannya yang telah diakui oleh defendan pertama, yang telah meletakkan cop syarikat atas pesanan hantaran itu. Pesanan hantaran tersebut telah ditandatangani oleh wakil defendan pertama dan dialamatkan kepada defendan pertama. Invois yang dikeluarkan oleh plaintif dialamatkan kepada defendan pertama. Defendan kedua, ketiga dan keempat adalah penjamin menurut surat jaminan. Ini adalah rayuan plaintif terhadap keputusan hakim mahakamah sesyen yang menolak permohonannya untuk penghakiman terus di bawah A 26A Kaedah-Kaedah Mahkamah Rendah 1980. Isu-isu yang perlu ditentukan adalah, antara lain: (i) sama ada plaintif telah melanggar terma surat dengan membenarkan kakitangan yang tidak diberi kuasa untuk menerima barangan; (ii) sama ada terdapat percanggahan dalam penghantaran plaintif sehingga menyebabkan bayaran dua cek kepada plaintif dihentikan; dan (iii) sama ada surat tersebut sah kerana plaintif gagal menghantar penyata akaun ditandatangani oeh pengarah urusan atau wakil yang diberi kuasa.

Diputuskan, membenarkan rayuan tersebut:

(1) Dalam kes melibatkan barangan yang dijual dan dihantar, penekanan diletakkan ke atas dokumen bertulis, iaitu penyata akaun, invois, nota penghantaran dan nota debit. Dokumen tersebut secara kolektifnya

membentuk satu kontrak bertulis (lihat perenggan); *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124 dikut; *YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian* [1989] 3 MLJ 490 dan *Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd* [1986] 1 CLJ 595 dirujuk. Menurut s 92 Akta Keterangan 1950, defendan dalam kes ini tidak boleh memberikan keterangan lisan untuk menentang, mengubah, menambah atau memootng daripada, terma-terma sebarang kontrak (lihat perenggan 10, 12).

(2) Plaintif telah menghantar penyata akaun dan invois-invois kepada defendan pertama. Fata tersebut tidak dipertikaiakn. Surat-surat tuntutan dihantar oleh plaintif kepada defendan dan defendan tidak membantah ataupun menyoal plaintif tentang penyata akaun, invois, nota penghantaran, nota debit dan surat tuntutan tersbeut. Bahkan, defendan pertama telah menghentikan bayaran dua ceknya yang diberikan kepada plaintif tanpa memberikan apa-apa alasan. Defendan tidak menghantar apa-apa surat kepada plaintif. Ia kelihatan seperti suatu yang telah difikirkan kemudian. Tiada tujuan selain daripada untuk mengelirukan dan melengah-lengahkan (lihat perenggan 13, 19).

(3) Ia suatu fakta yang tidak boleh dipertikaikan bahawa plaintif telah menghantar penyata akaun kepada defendan pertama dan defendan pertama tidak menyoal plaintif tentang akaun tersebut. Ini bermakna suatu situasi 'account-stated' telah timbul dan defendan diestopkan daripada menyoal tentang penyata akaun tersebut. Defendan tidak mengatakan wujudnya fraud bahkan telah membuat bayaran berdasarkan akaun yang diberikan oleh plaintif yang mana telah dihentikan bayarannya. Defendan tidak menyoal tentang invois yang dihantar oleh plaintif. Jika mereka tidak menerima barangan yang telah dipesan, atau mereka telah diberikan invois untuk pesanan orang lain, ia menjadi kelasiman yang bantahan patut ditimbulkan pada masa itu dan bukan selepas tindakan ini difailkan (lihat perenggan 16–17); *Emperee Industries Sdn Bhd v Renecgo Sdn Bhd* [1987] 1 CLJ 477 dan *Syarikat Tan Thiam Siong Sdn Bhd* [1983] 1 CLJ 256 dirujuk.

(4) Klausa 15 gerenti tersebut tidak menetapkan bahawa penyata akaun patut dihantar kepada defendan kedua, ketiga dan keempat. Ia hanya menyatakan bahawa satu penyata akaun yang ditandatangani oleh pengarah urusan plaintif atau ejennya adalah memadai dan adalah bukti konklusif terhadap defendan. Oleh itu, defendan telah gagal untuk emnimbulkan apa-apap isu yang perlu dibicarakan (lihat perenggan 20).]

Notes

For cases on sale of goods generally, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 4420–4423.

Cases referred to

Emperee Industries Sdn Bhd v Renecgo Sdn Bhd [1987] 1 CLJ 477 (refd)

Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka [1979] 2 MLJ 124 (folld)

Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd [1986] 1 CLJ 595 (refd)

YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian [1989] 3 MLJ 490 (refd)

Legislation referred to
Evidence Act 1950 s 92
Subordinate Courts Rules 1980 O 26A

Appeal from: Summons No 3–52–2222 of 2003 (Sessions Court, Shah Alam)

KT Ho (Gan, Ho & Razlan Hadri) for the plaintiff.
K Shashikala (Prakash & Co) for the defendant.

Suriyadi J (now JCA):

[1] This is the plaintiff's appeal against the decision of the sessions court judge dismissing its application for summary judgment under O 26A of the Subordinate Courts Rules 1980. The plaintiffs claim against the defendants in the court below is for the amount of RM218,662.80 being goods sold and delivered.

[2] It is the plaintiffs case that the first defendant had since May 2002 ordered goods from the plaintiff and the plaintiff had delivered the goods to the first defendant, the acceptance of which had been acknowledged by the first defendant, who had placed their company chops on the delivery orders. The delivery orders were duly signed by the first defendant's representatives and addressed to the first defendant. The signature and chop on the delivery orders bear the words 'Received Mentioned Goods in Good Condition and Water Free'.

[3] The second, third and fourth defendants were guarantors by virtue of a letter of guarantee dated 20 March 1997. The first defendant made payment to the plaintiff vide two Bank Utama cheques that subsequently could not be cleared because payment was stopped by the first defendant. The plaintiff then sent a letter of demand dated 19 March 2003 vide registered post to all the defendants. Despite the Letter, the defendants had all neglected to pay the amount claimed.

[4] The first issue raised by the defendants is that the plaintiff had been told since the first defendant's first letter dated 19 February 2001 to the plaintiff that instructions to deliver goods are subject to terms stated in the. letter. The terms are that only authorised personnel named in the Letter may acknowledge receipt of the goods with the company's chop. The plaintiff was given specimen signatures and the chop used for acknowledging receipt of the goods, vide the first defendant's letter dated 19 February 2001. The plaintiff was said to have breached the said terms by allowing unauthorised personnel to receive the goods.

[5] The defendants claimed that the plaintiff's dispute over the letter dated 19 February 2001 is sufficient to show that the issue is triable.

[6] The defendants' second issue is that the first defendant had to stop payment of the two cheques issued to the plaintiff because of some discrepancies in the plaintiff's deliveries.

[7] The defendants' third issue is the alleged wrongful payment for Invoice No 9060383448 dated 28 August 2002, in that it was made by the first defendant without realising that the delivery order was signed by an unauthorised personnel. **A**

[8] The defendants' fourth issue is that the plaintiffs denial that there ever was a meeting with the defendant's representative, Yeap Ai Kean ('the third defendant') could only be determined through a full hearing. **B**

[9] The defendants' fifth issue is about the letter of guarantee. The defendants claim that it is not valid because the plaintiff failed to send statements of account duly signed by the managing director or its authorised representative. **C**

[10] In coming to a decision in cases involving goods sold and delivered such as in this case, I would place due emphasis on the written documents, namely the statement of accounts, invoices, delivery orders, delivery notes and the debit notes. These documents would collectively constitute a contract reduced into writing. This principle had been laid down in the case of *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124 where Salleh Abas FJ (as he then was), delivering the judgment of the Federal Court said, 'We feel that this course of action is not open to the respondents, as it is clear that under s 92 of the Evidence Act 1950, oral evidence to contradict, vary, add to or subtract from, the terms of any contract, grant or disposition of property which had been reduced in writing is not admissible. The sales invoice and the delivery note being the contract reduced in writing between the appellants and the respondents s 92 therefore applies.' See also *YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian* [1989] 3 MLJ 490 where the High Court had decided that 'he was subsequently furnished with the relevant monthly statement of accounts to which he had no objections, protest or queries.' **D** **E** **F**

[11] Further in the case of *Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd* [1986] 1 CLJ 595, also a case concerning goods sold and delivered, the High Court granted the plaintiffs application for summary judgment on the ground that the defendant had not raised any objection or queries even though detailed particulars of the transactions were provided through the monthly statements of accounts. **G**

[12] Based on the above authorities and by virtue of s 92 of the Evidence Act 1950, the defendant in this case cannot offer oral evidence to contradict, vary, add to or subtract from, the terms of any contract. **H**

[13] In the present case, the plaintiff had sent statement of accounts and invoices to the first defendant. The fact is undisputed. Letters of demand were sent by the plaintiff to the defendant and the defendant had neither protested nor questioned the plaintiff on the statements of accounts, Invoices, delivery notes, debit notes and the letter of demand. Furthermore, the first defendant had stopped payment of its two cheques issued to the plaintiff without giving any reasons. **I**

[14] In the case of *Emperee Industries Sdn Bhd v Renecgo Sdn Bhd* [1987] 1 CLJ 477, also a case on goods sold and delivered, the High Court allowed the plaintiffs application for summary judgment since the delivery orders had shown that the defendant had acknowledged receipt of each delivery and the plaintiff had issued detailed invoices followed by statements of accounts. The defendant had not attempted to explain away these documents and had in addition to that, not been able to show why he had not protested if indeed he had been invoiced for someone else's goods.

[15] In the case of *Syarikat Tan Thiam Siong Sdn Bhd* [1983] 1 CLJ 256, also a case on goods sold and delivered, the High Court, granting the plaintiffs application for summary judgment, held that: 'The law is that in the event of non-query an account-stated came into existence which created an estoppel against the defendant from querying the accounts thereafter. There are situations for example if there was fraud, when a query may be permitted but on the facts of the case, no such situation existed.'

[16] Applying the above principles to the present case, it is an undisputed fact that the plaintiff had sent statements of accounts to the first defendant and the first defendant had not questioned the plaintiff on the said accounts. This means that a situation of 'account-stated' had arisen and the defendants are thereby estopped from now questioning the statement of accounts.

[17] The defendants had not alleged fraud and had even made payment based on accounts supplied by the plaintiff. The first defendant had made payment vide two Bank Utama cheques of which it had stopped payment. The defendants had not questioned the invoices sent by the plaintiff. If indeed they have not received the goods that they ordered, or that they were invoiced for someone else's orders, it is only natural that the objection should have been raised there and then and not after this action is filed.

[18] The same goes for the letters of demand sent by the plaintiff. No protests or disputes were raised by the defendants. As for the goods that the defendants alleged they have not received, no debit notes were applied for.

[19] On the first issue raised by the defendants, no evidence was given that the letter dated 19 February 2001 was sent to the plaintiff. Further, the first defendant had made payment vide two cheques and no reason was given by the first defendant as to why it had stopped payment. The defendant had not sent any letter to the plaintiff. The reasons only appear in the affidavit of Yeap Ai Kean and at this stage it would appear to be more of an afterthought. The same applies to the alleged wrongful payment for Invoice 90603834448 and the alleged meeting with plaintiff's representative in August 2002. I do not see any purpose in raising this issue other than to confuse and delay.

[20] As far as the statement of accounts is concerned, I find that cl 15 of the guarantee does not specify that the statement of accounts should be sent to the

second, third and fourth defendants. It merely stated that a statement of account signed by the managing director of the plaintiff or its agent is sufficient and is conclusive proof against the defendants.

[21] By virtue of the above reasons I find that the defendants have failed to raise any triable issues and I thereby allow the plaintiff's appeal with costs.

Appeal allowed.

Reported by Peter Ling